

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 7, 2013**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2012AP1129**

**Cir. Ct. No. 2011CV792**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN EX REL. CORBIT RIO,**

**PETITIONER-APPELLANT,**

**V.**

**GARY H. HAMBLIN AND WILLIAM POLLARD,**

**RESPONDENTS-RESPONDENTS.**

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APPEAL from an order of the circuit court for Dane County:  
FRANK D. REMINGTON, Judge. *Affirmed.*

Before Lundsten, P.J., Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Corbit Rio appeals a circuit court order that affirmed two prison disciplinary decisions upon certiorari review. For the reasons discussed below, we affirm.

## BACKGROUND

¶2 In Conduct Report 2088586, prison officials charged Rio with violating WIS. ADMIN. CODE §§ DOC 303.34 and 303.37, which respectively prohibit theft and lying. The charges were based upon allegations that Rio had falsely claimed not to have received certain canteen food items that he had ordered, some of which were later found in his cell without any receipt.

¶3 Rio submitted written statements from himself and six other inmates asserting that the other inmates had provided Rio with the items discovered in his cell. Based upon those submissions, the hearing officer found Rio not guilty of the charged offenses, but instead guilty of the unauthorized transfer of property in violation of WIS. ADMIN. CODE § DOC 303.40, which is defined in the administrative code as a lesser included offense of theft. *See* WIS. ADMIN. CODE § DOC 303.03(4). Specifically, the hearing officer found there was no evidence submitted showing that any of the exchanges of the canteen and food items from the six inmates to Rio were authorized by staff, which is required under § DOC 303.40 to constitute a permitted transfer of items between inmates. After his attempts to obtain administrative relief were unsuccessful, Rio filed a petition for certiorari review of the disciplinary action.

¶4 In Conduct Report 2073527, prison officials charged Rio with violating WIS. ADMIN. CODE § DOC 303.32, which prohibits enterprise and fraud. This charge was based upon allegations that library staff confiscated several documents from Rio's cellmate, Joshua Howard, including a letter to Garon Leitzke soliciting payment for legal services to be provided by "CJ Legal Group." The letter was prefaced with the statement, "I'm sure that Mr. Rio gave you some background information about us but I will attempt to expand on what he told you.

We are a network of litigation experts who specialize in criminal law ....” When interviewed, Leitzke stated that Rio had told him to contact Howard about getting in touch with CJ Legal Group. The hearing officer found Rio guilty of the lesser included offense of aiding and abetting enterprise and fraud, reasoning that the “CJ” in “CJ Legal Group” likely stood for the first names of Rio and his cellmate—i.e., Corbit and Joshua.

¶5 Rio filed an appeal with the warden that raised both a substantive challenge to the sufficiency of the evidence and procedural errors including whether the conduct report was signed by the proper staff member, whether the report was timely reviewed by the security officer, and whether the hearing officer improperly considered Rio’s conduct record. After the warden affirmed the disciplinary decision, Rio filed an inmate complaint, the text of which stated only, “My arguments on appeal are attached. As the DOC-91 shows, the warden failed to respond to address any of the issues raised.” The inmate complaint examiner recommended that the complaint be rejected on the grounds that it had failed to identify any specific procedural rule that had been violated, noting that the original appeal to the warden was final with respect to sufficiency of the evidence and refusing to “attempt to extract a procedurally based claim of error from the record or glean one from the brief text of the complaint submission.” The reviewing authority accepted the examiner’s recommendation to reject the complaint.

¶6 Rio subsequently moved to amend his petition on his pending certiorari action to include the second disciplinary decision. The circuit court determined that Rio had failed to properly exhaust his administrative remedies with respect to any procedural claims arising out of the second disciplinary hearing, and affirmed both decisions in all other respects.

## STANDARD OF REVIEW

¶7 The established procedure for seeking judicial review of a prison disciplinary decision is by a common law writ of certiorari. *State ex rel. L’Minggio v. Gamble*, 2003 WI 82, ¶21, 263 Wis. 2d 55, 667 N.W.2d 1. Our common law certiorari review is limited to the record created before the committee. *State ex rel. Whiting v. Kolb*, 158 Wis. 2d 226, 233, 461 N.W.2d 816 (Ct. App. 1990). Regarding the substance of the prison disciplinary decision, we will consider only whether: (1) the committee stayed within its jurisdiction; (2) it acted according to law; (3) its action was arbitrary, oppressive or unreasonable and represented the committee’s will and not its judgment; and (4) the evidence was such that the committee might reasonably make the order or determination in question. *Id.*

¶8 In considering whether a prison disciplinary committee acted according to law, we will independently determine whether an inmate was afforded due process during the administrative proceedings. *See State ex rel. Meeks v. Gagnon*, 95 Wis. 2d 115, 119, 289 N.W.2d 357 (Ct. App. 1980). The threshold question of whether administrative remedies have been properly exhausted is also subject to independent review. *L’Minggio*, 263 Wis. 2d 55, ¶11.

## DISCUSSION

¶9 As a threshold matter, the respondents assert that the circuit court erred in allowing Rio to consolidate his requests for review from two separate disciplinary proceedings into a single certiorari action. Rather than citing any direct authority for that proposition, they argue that common law certiorari review of prison disciplinary proceedings is “akin” to WIS. STAT. ch. 227 review of other types of administrative decisions, and that ch. 227 “is replete with sections that

refer to a single agency decision in a judicial review proceeding.” We do not find this argument persuasive.

¶10 First of all, the respondents have not pointed to any specific provision in WIS. STAT. ch. 227 that explicitly prohibits the consolidation of review from multiple administrative decisions into a combined circuit court action. Even assuming the respondents’ position to be a reasonable reading of the statutory scheme, it does not follow that every provision of ch. 227 automatically applies to all common law certiorari actions. Certainly, in the absence of either statute or case law directly prohibiting the consolidation of multiple disciplinary actions into a single certiorari action, we will not conclude the circuit court erred by permitting the amendment of the petition. Rather, we suggest that the respondents’ request for the adoption of a rule prohibiting such consolidations in prison disciplinary cases would be better addressed to the superintending authority of the Wisconsin Supreme Court. Accordingly, we will proceed to consider whether Rio is entitled to relief with respect to either conduct report.

*Conduct Report 2088586*

¶11 Rio contends that his due process rights were violated when he was found guilty of the unauthorized transfer of property rather than the charged offense of theft. He asserts, and the respondents do not dispute, that the applicable due process test for finding a prisoner guilty of a lesser included disciplinary violation is whether the modified offense was based upon the same factual allegations stated within the conduct report. *See Northern v. Hanks*, 326 F.3d 909, 910-11 (7th Cir. 2003).

¶12 We are satisfied that the charge of unauthorized transfer was based upon the same basic factual allegations stated in the conduct report—namely that

prison staff had found a number of specified canteen items in Rio's cell for which Rio had no receipt. Rio plainly had notice that the origin of those items was at issue. If Rio's defense was to show that he had legitimately obtained those items from other inmates rather than directly from the canteen, then it was incumbent upon him to also show that any such transfers from other inmates had been authorized, which he failed to do.

*Conduct Report 2073527*

¶13 The State contends that Rio failed to adequately exhaust his administrative remedies for any procedural issues arising out of the second disciplinary action. We do not find it necessary to address that contention, however, because the only arguments that Rio has developed on the present appeal appear to relate to the substantive issue of the sufficiency of the evidence, which Rio did properly appeal to the warden. *See generally* WIS. ADMIN. CODE § DOC 303.76(7)(d) (creating a bifurcated system for seeking administrative relief from disciplinary decisions in which the warden's decision is final with respect to the sufficiency of the evidence, but alleged procedural errors may be further appealed through the inmate complaint review system).

¶14 Rio argues that the evidence was insufficient to find him guilty of aiding and abetting an enterprise because nothing in the record shows that he was aware that CJ Legal Group was a scam, or that he otherwise aided and abetted his cellmate in the enterprise. We disagree.

¶15 First, Rio does not dispute that he was the one who directed Leitzke to contact Howard about CJ Legal Group. It was reasonable for the hearing officer to infer that Rio knew that CJ Legal Group consisted of inmates providing legal services for money because Rio and Howard were cellmates, the title of the

group corresponded to the initials of their first names, and the letter to Leitzke referenced prior “background information” that Rio may have given to Leitzke about the group. In short, the hearing examiner was not required to find either Rio or Howard’s denials about the extent of Rio’s knowledge or participation to be credible. Accordingly, we affirm.

*By the Court.*—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

